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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,012	09/01/2000	Karen A. Kreutz	8241	5529

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EXAMINER

KIDWELL, MICHELLE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 12/12/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/653,012

Applicant(s)

KREUTZ ET AL.

Examiner

Michele M. Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 21-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions, is required under 35 U.S.C. 121:

- I. Claims 1 – 20 and 26, drawn to a feminine hygiene kit comprising an absorbent tampon, classified in class 604, subclass 358.
- II. Claims 21 - 25, drawn to training tampon comprising a substantially nonabsorbent tampon device, classified in class 904.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the feminine hygiene kit can be used with any absorbent tampon having a syngina absorbent capacity of less than or equal to about 6 grams. The subcombination has separate utility such as a stand-alone product as disclosed by the applicant on page 14 of the specification.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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During a telephone conversation with Matthew Fitzpatrick on December 6, 2001 a provisional election was made with traverse to prosecute the invention of group I, claims 1 – 20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 21 – 24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
It does not identify the citizenship of each inventor.

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

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The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: a tampon usage system has not been defined nor supported by the specification.

Claim Objections

Claim 26 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Accordingly, the claim will not be treated further on the merits.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 – 6 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The applicant claims that the absorbent tampon has a syngina absorbent capacity of less than or equal to about 6 grams, but a syngina absorbent capacity has

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not been defined by the specification. Likewise, a tampon usage system as set forth in the claims has not been supported by the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1 – 5, as best understood by the Examiner, are rejected under 35 U.S.C. 102(e) as anticipated by Moder et al. (US 5,986,165).

With reference to claim 1, Moder et al. (hereinafter "Moder") discloses a feminine hygiene kit comprising an absorbent tampon (14), said tampon comprising an absorbent core and a withdrawal mechanism attached thereto (col. 9, line 54 to col. 10, line 24 and figure 4), wherein the core has an absorbent capacity of less than or equal to about 6 grams (col. 19, line 66 to col. 20, line 19), and a backup feminine protection product (12) wherein the tampon and the backup feminine protection product are packaged in a common package as set forth in col. 6, lines 47 – 55.

Regarding claim 2, Moder discloses a feminine hygiene kit wherein the backup feminine protection product is a pantiliner as set forth in col. 6, lines 24 – 26.

As to claim 3, Moder discloses a feminine hygiene kit wherein the pantiliner has a caliper of less than or equal to about 3 mm as set forth in col. 7, lines 40 – 41.

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With reference to claim 4, Moder discloses a feminine hygiene kit wherein the backup feminine protection produce is a sanitary napkin as set forth in col. 8, lines 44 – 48.

With respect to claim 5, Moder discloses a feminine hygiene kit wherein the backup feminine protection product is an absorbent interlabial device as set forth in col. 3, lines 5 – 9.

Claims 7 is rejected under 35 U.S.C. 102(e) as anticipated by Stravitz (US 6,164,442).

As to claim 7, Stravitz discloses a feminine hygiene kit comprising an absorbent tampon and a mirror as set forth in col. 6, lines 8 – 32.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 8 – 9 and 14 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stravitz.

Regarding claim 6, Stravitz provides a feminine hygiene kit comprising a tampon a backup feminine protection product and a mirror packaged together in a common package.

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It would have been obvious to one of ordinary skill in the art to substitute one type of tampon for another based on the desired product because the replacement of one tampon for another requires only a level of ordinary skill in the art. Likewise, a tampon having an absorbent capacity of equal to about 6 grams may be designated as a "regular" tampon according to the applicant and the United States Food and Drug Administration and would not require any special motivation for substitution.

With respect to claims 8 and 19 – 20, it is well known in the art to package a tampon with a tampon insertion guide and/or instruction booklet which would thereby assist the user in creating a tampon usage system, in order to provide the user with personal assistance and necessary guidelines associated with using the product.

It would have been obvious to one of ordinary skill in the art to modify the feminine hygiene kit of Stravitz to include such guides and/or instructions to provide assistance to users that are not familiar with tampon usage.

With reference to claims 9 and 14 – 18, it would have been obvious to one of ordinary skill in the art to modify the feminine hygiene kit of Stravitz to employ any and/or all of the claimed limitations based on the targeted population because the purpose of the kit in general is to provide convenience to the user. Likewise, Stravitz discloses that a space is provided in the kit to accommodate additional items or articles as desired as set forth in col. 6, lines 13 – 15.

Claims 10 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stravitz and further in view of Morrow (US 5,988,386).

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The difference between Stravitz and claim 10 is the provision that the feminine hygiene kit further comprise an insertion glove.

Morrow teaches a feminine hygiene kit further comprises a glove as set forth in col. 11, lines 41 – 43.

It would have been obvious to one of ordinary skill in the art to modify the feminine hygiene kit of Stravitz to include a glove because the glove allows the woman's hand to remain sanitary while inserting/removing the tampon as taught by Morrow in col. 11, lines 50 – 52. While the glove of Morrow is explicitly disclosed as a removal glove, the glove remains fully capable of being used as an insertion glove and serves the same purpose as the insertion glove.

Regarding claims 11 – 13, Morrow teaches the claimed limitations as set forth in col. 11, lines 33 – 58.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Michele Kidwell
Michele Kidwell
December 6, 2001

A handwritten signature in black ink, appearing to be "Michele Kidwell", written in a cursive style.

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.